BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

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| IN THE MATTER OF ITT RAYONIER, INC., GRAYS HARBOR DIVISION,<br><br>Appellant,<br><br>v.<br><br>STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,<br><br>Respondent. | PCHB No. 79-178<br><br>FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER |

This matter, the appeal of a $750 civil penalty for the alleged violation of RCW 90.48.080 and .160, came before the Pollution Control Hearings Board, Nat Washington, Chairman, Chris Smith and David Akana (presiding) at a formal hearing in Lacey on February 4, and 26, 1980.

Appellant was represented by its attorney, David A. Berner; respondent was represented by Charles W. Lean, assistant attorney general.

Having heard the testimony, having examined the exhibits, having

considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Appellant owns or controls an acetate grade dissolving sulfite pulp mill located in Hoquiam, Washington. Discharges from the pulping operation are first treated then discharged into the Chehalis River.

II

Appellant's effluent treatment system includes a primary and a secondary treatment system. The primary treatment system includes a primary clarifier and solids dewatering equipment. The secondary treatment system includes an aeration basin, three secondary clarifiers, and solids dewatering equipment shared with the primary system.

III

During the time periods in question, appellant possessed a permit, No. WA 000307-7, to discharge its treated effluent into the waters of the state.

IV

Respondent approved appellant's plan for a treatment system which included four clarifiers. Appellant installed three rather than four clarifiers which had approximately the same size as the four clarifiers. The change was not approved by respondent.

V

Appellant's system as installed on April 16, 1979, and when operated properly can achieve the effluent limitations represented by "best practicable control technology currently available" (BPT).

VI

Appellant's mill reached normal operation in March of 1979. The mill was not in a startup mode in April before one of the clarifiers malfunctioned and was taken out of operation due to a sag in the truss of a rake arm on April 14, 1979. This left only two clarifiers in service. Such an occurrence was not foreseeable by appellant.

VII

Appellant installed new sludge dewatering equipment to process sludge from the primary and secondary treatment sytems. The new equipment was first operated on April 6, 1979. From April 6 through April 15, 1979, appellant began processing varying but generally increasing amounts of sludge. When the dewatering system is not functioning properly, and the plant continues to operate, appellant can either recirculate its suspended solids or discharge the effluent into the river.

VIII

After April 1, 1979, appellant allowed the secondary system to recirculate more solids. On April 15, the aeration basin, located between the primary treatment system and the secondary clarifiers, reached a solids concentration level exceeding its design operational level. When operated above design level, the system becomes harder to operate. A constant, steady load is important to the proper operation of the secondary treatment system. If solids are added above the design load to the point of overloading the system, the clarifiers will not operate properly. Appellant caused the solids to increase in the system thereby creating a more likely instance of higher solids

discharge as occurred on the days in question.

IX

On April 16, 17, and 18, 1979, appellant discharged into public waters an amount of total suspended solids which exceeded the amount allowed by its permit. For the discharges, appellant was issued a $750 civil penalty which was appealed to this Board. Although the excess discharges are not disputed, appellant contends that its equipment was BPT on the days in question and that the excessive discharges were an unforseeable event for which any fine should be suspended. Appellant's new dewatering system did not remove consistent amounts of sludge, and together with the clarifier breakdown, probably caused the instant excursions.

X

Appellant's effluent treatment system employs technology which can meet the effluent limitation parameter for total suspended solids (TSS) when properly operated. On April 16, 17, and 18, 1979, the system experienced excursions over the allowable limits because of appellant's technique of operating.

XI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

RCW 90.48.080 makes it unlawful to discharge into any of the

waters of the state any matter that causes or tends to cause pollution of the waters.

RCW 90.48.160 requires that commercial or industrial operations which dischage waste material into the waters of the state to procure a permit before disposing of such material.

RCW 90.48.144 provides that any person who conducts a commercial or industrial operation without a waste discharge permit or violates RCW 90.48.080 shall incur a penalty in an amount of up to $5,000 a day for every such violation.

II

Appellant violated the TSS limitations of its permit on April 16, 17, and 18, 1979, as alleged. The violation and $750 civil penalty, which is reasonable in amount, should be upheld unless excused under the exception developed in Marathon Oil Company v. EPA, 12 ERC 1098 (1977) which both parties agree is available to appellant. The case recognizes that a violation may be excused if BPT is in place and if operated in an exemplary fashion. We conclude that BPT was in place on the days in question. However, we conclude that appellant's operation was not shown to be exemplary. That burden falls upon appellant and it has not brought itself within the Marathon Oil exception. Accordingly, respondent's action and the $750 civil penalty should be affirmed.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The Department of Ecology Order DE 79-341 assessing a $750 civil penalty upon ITT Rayonier, Inc., is affirmed.

Dated this 12th day of May, 1980, in Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD

NAT W. WASHINGTON, Chairman

DAVID AKANA, Member